IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5438 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMMED RAFIQ ALIAS GARIBADO RAMZAN SHAIKH

Versus

STATE OF GUJARAT THROUGH ADDL CHIEF SECRETARY (SPECIAL)

Appearance:

MR BM MANGUKIYA for Petitioner

MR HN SOMPURA, AGP for Respondent Nos.1, 2 & 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/08/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 19-5-2000 passed by the Police Commissioner, Ahmedabad City who has been declared as a dangerous person.

2. It is a settled principle of law that in order to

bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, her activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner at length and also perused the material on record. But learned advocate for the petitioner has restricted his argument on the point that representation has been made by the petitioner by R.P.A.D. through his brother on 31-5-2000 and same has been received by the detaining authority on 2-6-2000. He has also produced xerox copy of the acknowledgment slip at page 115. He has submitted that said authority has written a letter on 16-6-2000 to the petitioner specifically stating therein that the said representation has been received by the Commissioner of Police on 15-6-2000 and same has been decided on 16-6-2000. It was stated in the said letter that representation of the petitioner has been forwarded to the State Government. According to the learned advocate, the facts are otherwise. It was stated by him that said representation has been received by the detaining authority on 2-6-2000 and same has not been forwarded by the authority to the State Government in time and, therefore, there is a delay in forwarding the representation which is fatal to the order of detention. Learned Addl. Govt. Pleader has fairly admitted the same.

4. It has been held in a case of Urmilaben Navnitlal Gandhi Vs. The Commissioner of Police, Surat City and Others, 1994(2) G.L.H. (U.J.) 10 at head note (A) as under:

> "(A) Preventive Detention--Gujarat Prevention of Anti-Social Activities Act, 1985--Delay of five days in considering representation not properly explained--Held, detention invalid."

In the above unreported judgment, a representation of the detenu dated 12th October, 1993, which was received by the detaining authority on 14th October, 1993 was rejected on 15th October, 1993. The said representation was forwarded to the State Government on 16th October, 1993, but the office forwarded it to the State Government on 19th/21st October, 1993. It was received by the State Government on 26th October, 1993 and rejected on 27th October, 1993. The Court, applying the ratio in Harish Pahava Vs. State of Uttar Pradesh, AIR 1981 SC 1126, has observed in the above unreported judgment that the said delay of five days, i.e. from 16th October, 1993 to 21st October, 1993 in forwarding the representation was unreasonable and not properly explained vitiating the continued detention of the detenu.

5. In the instant case, it appears that though representation has been made by the petitioner on 31-5-2000, it has not been forwarded by the detaining authority to the State Government atleast till 15-6-2000. So, there is a delay of 15 days in forwarding the representation to the State Government. It is to be noted that no affidavit explaining satisfactorily the said delay caused in forwarding the representation has been filed by the respondents. As representation of the petitioner has not been forwarded by the authority in time, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal.

6. In view of the above, the petition is allowed. The order of detention dated 19-5-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Mohammed Rafiq @ Garibado Ramzan Shaikh is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

radhan/